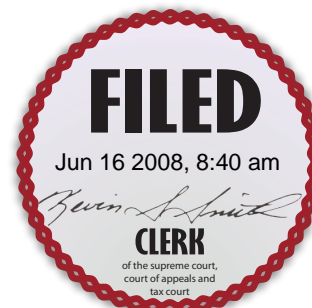


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

NEIL SMITH,)
)
Appellant/Defendant/Counterclaimant,)
)
vs.)
)
RACHELLE LIDDIL,)
)
Appellee/Plaintiff/Counterdefendant.)

No. 12A02-0708-CV-652

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0606-PL-269

June 16, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Neil Smith appeals from the trial court's order following a bench trial. Specifically, Smith contends that the trial court erred in granting Rachelle Liddil's complaint seeking specific performance of a real estate purchase agreement and denying his counterclaim for foreclosure.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On September 29, 1991, Liddil and her late husband, Robert L. Liddil, ("the Liddils") entered into a contractual agreement to purchase a single lot in the First Sunshine Addition ("the property") in Kirklin from Smith. The purchase price of the property was \$3442.83 plus interest at an annual rate of fourteen percent. The Liddils agreed to pay sixty equal monthly payments of eighty dollars and eleven cents.

On April 19, 1996, the Liddils filed for Chapter 13 Bankruptcy. Smith filed a claim in which he asserted that the Liddils owed him \$9157.36 on the property. The Liddils believed that they owed Smith far less, but nevertheless agreed to pay his claim in full. The Liddils' bankruptcy trustee agreed to pay Smith \$465 per month until the claim was paid in full.² The Liddils made all payments as scheduled. The Liddils' bankruptcy

¹ We note that is support of Smith's Appellant's Brief is framed as an appellate argument and is practically a verbatim copy of the bench brief submitted to the trial court by his trial counsel following trial. This brief, while presumably sufficient for submission before the trial court, does not comply with the requirements for presenting an argument on appeal. The requirements for presenting an argument on appeal are set forth in Rule 46(A)(8) of the Indiana Rules of Appellate Procedure. We further note that the Statement of Facts and Summary of Argument sections of Smith's brief do not comply with the requirements for these sections as is set forth in Rule 46(A)(6) & (7) of the Indiana Rules of Appellate Procedure. Despite Smith's failure to comply with the requirements of Rule 46(A)(6)-(8), we will nonetheless consider Smith's claim, to the extent a cogent argument is made.

² The Liddils' monthly payment schedule pursuant to the bankruptcy proceedings was \$500. Smith wished to be paid before the Liddils' other creditors and therefore, until the debt was paid in full, Smith received \$465 of their \$500 payment each month.

was dismissed on November 7, 2000, following confirmation from their bankruptcy trustee that a zero balance remained and that all of their creditors had been paid in full. Smith never conveyed title of the property to the Liddils.

On June 14, 2006, Liddil filed a complaint seeking specific performance of the contractual agreement. On September 12, 2006, Smith answered and filed a counterclaim seeking foreclosure of the property. The trial court conducted a bench trial on January 29, 2007, following which the parties filed bench briefs. On March 22, 2007, the trial court granted Liddil's complaint and denied Smith's counterclaim. This appeal follows.

DISCUSSION AND DECISION

On appeal, Smith argues that the trial court erred in granting Liddil's complaint seeking specific performance of a real estate purchase agreement and denying his counterclaim for foreclosure.³ Liddil counters, arguing that the evidence supports the trial court's judgment in her favor. We agree with Liddil.

In our review of Smith's challenge to the sufficiency of the evidence to support the judgment of the trial court, we neither reweigh the evidence nor judge the credibility of the witnesses, and we will consider only the evidence and reasonable inferences arising therefrom which support the finder of fact's verdict. *Dollar Inn, Inc. v. Slone*, 695 N.E.2d 185, 188 (Ind. Ct. App. 1998), *trans. denied*. In a civil case in which the finder of fact returns its verdict for the plaintiff, reversal is proper only where there is no evidence

³ Smith does not explicitly express that his challenge on appeal is to whether the evidence was sufficient to support the trial court's judgment. However, upon our review of Smith's Appellant's Brief, we conclude that he is, in fact, challenging the sufficiency of the evidence.

or reasonable inference from the evidence on an essential element of the plaintiff's case.

Id. Here, the evidence supporting the trial court's determination is Liddil's testimony that Smith "was paid in full." Supp. Tr. p. 11. Additionally, the Final Report and Accounting provided by Liddil established that all of her creditors, including Smith, had been paid. In light of the evidence supporting Liddil's claim that Smith had been paid in full, we conclude that the judgment of the trial court was not erroneous.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.